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The challenge of building an independent citizenship regime in a partially recognised state: the case of Kosovo

Gëzim Krasniqi

Working Paper 2010/04



European Research Council



University of Edinburgh, School of Law
The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia
(CITSEE)

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This paper has been produced in close collaboration with the European Union Democracy Observatory on Citizenship (EUDO-Citizenship) and has been made available as a EUDO country report on www.eudo-citizenship.eu. The paper followed the EUDO structure for country reports presenting historical background, current citizenship regimes and recent debates on citizenship matters in the country under scrutiny. Other materials that complement this paper such as citizenship-related legislation, citizenship news, chronology, adopted international conventions and bibliography are also available on the EUDO website.

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The challenge of building an independent citizenship regime in a partially recognised state: the case of Kosovo

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Abstract

This paper analyses efforts to create an independent citizenship regime in the partially recognised state of Kosovo. It argues that in a situation where there was no previous independent baseline for citizenship, Kosovo opted for the 'new state' model in defining and constituting its citizenry. Thus, by defining the new body of citizens in terms of territory and residence (though with certain conditions and limitations), the 'new born' state differs substantially from most of other countries that emerged after the dissolution of Yugoslavia. This paper includes a historical account of citizenship policies in the territory of Kosovo, a detailed analysis of the new Kosovar citizenship regime, and an overview of the current political debates related to citizenship.

Keywords:

Citizenship, Kosovo, Yugoslavia, Serbia, residents, minority, statelessness

Introduction

After almost fifteen months of unsuccessful negotiations between Kosovar² Albanian leaders and Serbia's leadership led by the UN Special Envoy for Kosovo Martti Ahtisaari, Kosovo declared independence from Serbia in February 2008. It has so far gained only partial recognition and only 64 countries had recognised Kosovo as of December 2009. The move was and is vehemently opposed by Serbia, but also by many other countries, including five EU Member States, Russia, and China.

As a new state, Kosovo faces serious political and legal problems regarding its citizenship. The Parliament of Kosovo adopted a new Law on Citizenship only three days after the declaration of independence. However, because of internal and external disagreements about the future of the country and polity, Kosovo faces

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² Kosovo is the international version of the name used to describe this country. In Albanian language, the country is referred to as *Kosovë* or *Kosova*. In Serbian, it is *Kosovo*. In English language alone, the adjective form of the term is *Kosovar* (mainly in international English) or *Kosovan* (in British English). Throughout this paper I will be using terms Kosovo (as a noun) and Kosovar (as an adjective). However, in cases of reference to official documents, the original version will be used.

difficulties in reinforcing both its statehood and in constituting the initial body of its citizens. Serbia's refusal to recognise Kosovo's independence has transformed the country into a territory of overlapping sovereignties: Serbia claims that all citizens of Kosovo are still Serbian citizens. In this situation, the absolute majority of Kosovo Serbs (who make less than 10 per cent of the overall population) consider themselves to be Serbian citizens alone (although a considerable number of them now accept new Kosovo documents as well). Ethnic Albanians, however, have embraced Kosovo citizenship, but a huge number of them still keep their Serbian documents and passport for many practical purposes. Dual citizenship is therefore widespread, both with Serbia and with third countries (because of both economic and political emigration from Kosovo). This whole mosaic of problems is further complicated when one considers the consequences of the war in Kosovo (1998-1999), nearly a decade of *de facto* statelessness, and the relatively high number of refugees and internally displaced people (IDPs), most of whom yet have to resolve their citizenship status.

However, in terms of the newly adopted Kosovar citizenship legislation, the country comes very close to what Rogers Brubaker (1992: 277) called the 'new state' model.³ It enables all pre-war residents of Kosovo (who were citizens of the Federal Republic of Yugoslavia) as well as those persons who habitually resided in Kosovo during the period of the United Nations Mission in Kosovo (UNMIK) administration (1999-2008) to become citizens of Kosovo. In addition, it allows dual and multiple citizenship and it does not contain any provisions reflecting ethnic preference. Likewise, in the terms of terminology, the legislation applies the ethnically-neutral terms *shtetas* and *shtetësi* ('citizen' and 'citizenship') which describe the bond between the state (*shtet*) and an individual, without reference to ethnicity. *Kombësia* (nationality) is the term used to designate national belonging of a person, referring only to the ethno/linguistic affiliation and not to a legal tie.

As with other cases of internationally designed states, such as Bosnia and Herzegovina, Kosovo's relatively new and liberal legislation is drafted in close coordination with various international institutions present in the country and

³ While analysing the emergence of the new states following the demise of the Soviet Union, Brubaker describes two kinds of states in terms of their citizenship policies: new states and restored states. The former category includes those states which previously did not have an independent basis of citizenship (republic-level citizenship – as is the case with the former Yugoslav republics). These states had to define their initial body of citizens primarily in terms of territory (though with some limitations and conditions). The latter category refers to the Baltic States, which were independent before incorporation into the Soviet Union. By claiming continuities of statehood and citizenship Estonia, Latvia and Lithuania (though Lithuania differs substantially from the other two cases) opted for restoration of citizenship to their interwar citizens and their descendants rather than the creation of new citizenry that would also include permanent residents in these republics. In the case of Kosovo, since the country was not a republic in Yugoslavia, and as such did not have its own republic-level citizenship, it had to build its initial body of citizens mostly on the basis of the principle of territory and residence, with certain conditions and limitations, thus differing substantially from other countries that emerged after the dissolution of Yugoslavia.

indeed it reflects their strong political influence. In fact, the Law on Citizenship of Kosovo is part of the so called 'Laws of Ahtisaari's package'⁴ and in many aspects reflects the vision of the UN Special Envoy for Kosovo (and the international community engaged in the Kosovo status talks) for a multi-ethnic and all inclusive society and a civic state. Likewise, the process of replacing UNMIK documents with Kosovar ones is currently ongoing on basis of the new legislation, and a general census is planned for 2011. Although most of the citizenship legislation has already been adopted, there is a need for more administrative instructions and other by-laws that would facilitate the process of acquisition and loss of Kosovar citizenship. Further international supervision of the process is needed to make sure that the legislation in force is implemented properly.

Nonetheless, Kosovo's weak international position, which is caused by its lack of membership in any major international political organisation, and the fact that it was left aside in the visa liberalisation process with EU, continues to incite internal debates and raises concerns among the population about the practical value and use of the new Kosovar citizenship. In particular, the decision of the European Union not to offer a visa free regime in respect of the Schengen zone for Kosovar citizens (as well as for Serbian passport holders who are Kosovo residents) enhances already existing fears of discrimination and isolation.

2 Historical background

2.1 Before Yugoslavia: the citizenship status of Kosovo inhabitants

The present day-territory of Kosovo was part of the Ottoman Empire for more than five centuries. From 1877 Kosovo, a much larger territory than the current state, formed a separate *Vilayet* (province) within the Empire. This situation lasted until the Balkan Wars (1912-1913) when Kosovo was annexed and divided by the Kingdom of Serbia and the Kingdom of Montenegro. Until the late nineteenth century it was the *millet* system that broadly determined and regulated the relationship not between individuals but between different communities (primarily defined in terms of religion) and the state. The *millet* system created two classes of citizens, with Muslims enjoying more rights than non-Muslims, though the latter were provided with

⁴'Laws of Ahtisaari's package' are those laws deriving from Annex XII (Legislative Agenda) of the Comprehensive Proposal for the Kosovo Status Settlement (widely known as Ahtisaari's plan) that the Assembly of Kosovo undertook to approve immediately after the declaration of independence in order to implement the terms of Ahtisaari's plan. Most of these laws provide wide-range rights for minorities living in Kosovo, in particular Serb minority. In fact, Ahtisaari's plan served as the legal and political basis for declaration of independence of Kosovo and, according to the Constitution of Kosovo (art. 143.2), it shall take precedence over all other legal provisions in Kosovo. See *The Comprehensive Proposal for the Kosovo Status Settlement*, 26 March 2007. <http://www.unosek.org/unosek/en/statusproposal.html>. The Constitution of the Republic of Kosovo, Pristina, 15 June 2008. <http://www.assembly-kosova.org/?krye=documents&docid=48&lang=en>.

separate legal courts pertaining to personal law under which they were allowed to rule themselves (mainly through their religious leaders). During the *Tanzimat* (reforms) period (1839-1876), the Ottoman Government, in an attempt 'to supersede the ethnic and religious loyalties of the various minority groups' (Karpas 1972: 261), took several steps to introduce equal citizenship. The 1839 and 1856 Edicts, then the 1867 Ottoman Law on Nationality⁵ and 1876 Ottoman Constitution⁶ recognised Ottoman citizenship for all inhabitants, regardless of their ethnicity and religion, thus almost completely abolishing the *millet* system.

2.2 Citizenship in the first Yugoslavia, 1918-1941

In the period between the Balkan Wars and the creation of the Kingdom of Serbs, Croats and Slovenes in 1918, the inhabitants of the present day territory of Kosovo were *de facto* stateless. *De jure* their status was determined and regulated by the Serbian and the Montenegrin legislation that was in force at the time.⁷ However, due to the start of the First World War and the subsequent occupation of Kosovo by the Austro-Hungarian army, none of these legal provisions had any real effect. After the war, the inhabitants of Kosovo were granted various citizenship rights (voting rights); they only legally became citizens of the Kingdom of Serbs, Croats and Slovenes in 1928 with the adoption of the Citizenship Act of the Kingdom of Serbs, Croats and Slovenes⁸ (Malcolm 1998: 266; Jovanović 2008: 61). The 1928 Law established a single citizenship for the entire Kingdom where every subject had to have a domicile in one of the municipalities. It did not tolerate dual citizenship. The law also contained temporary regulations introduced to regulate the status of inhabitants of the former provinces of the Ottoman Empire annexed by Serbia and Montenegro in 1912-1913.

However, despite the fact that the Kingdom of Serbs, Croats and Slovenes signed the Treaty of Saint Germain,⁹ which represents the cornerstone of the minority rights and obligations that interwar Yugoslavia undertook to comply with and to respect, the new state denied most of the citizenship rights to the Albanians who made up the majority of population in Kosovo. Many were forced to renounce their

⁵ See Richard W. Flournoy and Manley O. Hudson (eds.), *A collection of nationality laws of various countries as contained in constitutions, statutes and treaties*. New York: Oxford University Press, 1929.

⁶ Art. 8 of this Constitution stipulates that 'All subjects of the empire are called Ottomans, without distinction whatever faith they profess; the status of an Ottoman is acquired and lost according to conditions specified by law'. See *The Ottoman Constitution*. 23 December 1876. <http://www.worldstatesmen.org/OttomanConstitution1876.htm>.

⁷ The Civil Code of Serbia (1844), The Constitution of the Kingdom of Serbia (1903) and The Statute of Montenegro (1905).

⁸ *Official Gazette of the Kingdom of Serbs, Croats and Slovenes*, 245/1928.

⁹ *Treaty between the Principal Allied and Associated Powers and the Serb-Croat-Slovene State*. St.

Germain-en-Laye, 10 September 1919. <http://www.austlii.edu.au/au/other/dfat/treaties/1920/14.html>.

citizenship and emigrate to Turkey.¹⁰ Yugoslav state centralism and pursuit of an ideology of national unity (the Yugoslav Kingdom was perceived as the national state of the South-Slavic people) alienated and oppressed Albanians, as well as other non-Slavic minorities, such as Germans, Italians, Hungarians, and Turks.

In the course of the Second World War, most of Kosovo was occupied by Italian forces from 1941 to 1943 and thereafter German forces until the end of the war. Italy initially annexed Albania (1939) to continue with the occupation of the Albanian inhabited regions of Yugoslavia (including most of the territory of Kosovo) and attached it to the former. Thus, Italy extended various citizenship rights of the Kingdom of Albania (whose independence was formally preserved within the Italian Kingdom) to the people in the territories it occupied in Yugoslavia. Albanian became one of the official languages in Kosovo, a new Albanian-dominated administration was put in place, and Albanian schools were opened.

2.3 Citizenship in the second Yugoslavia, 1945 - 1991

Kosovo was reincorporated into Yugoslavia after the end of the Second World War, this time as an autonomous region (*oblast*) - a lower status than that of a province (*pokrajina*) that Kosovo would later become in 1963¹¹ - of the People's Republic of Serbia. It is worth noting that it was the first time since the final phase of Ottoman rule that Kosovo had become an administrative unit based on its large Albanian majority (which had been defined as a nationality (*narodnost*) since early 1960s). The borders established after the war are the current borders of the state of Kosovo. In the 'new Yugoslavia' the citizenship issue was promptly regulated, as the Yugoslav Federation adopted two essential laws defining the subject of citizenship: the Citizenship Law¹² and the Law on Deprivation of Citizenship,¹³ which especially targeted members of the former Royal Army of Yugoslavia. The new law was based

¹⁰ This was regulated with the Art. 55, paragraph 4, of the Citizenship Act of the Kingdom of Serbs, Croats and Slovenes, that refers to former Ottoman subjects 'wishing' to renounce Yugoslav citizenship. Moreover, on 11 July 1938 the Kingdom of Yugoslavia signed the so called 'Convention for regulation of emigration of the Turkish population from the region of Southern Serbia in Yugoslavia' with Turkey which targeted the Muslim population of Kosovo, namely Turks and Albanians.

¹¹ Under the 1946 Yugoslav constitution, Kosovo was an Autonomous Region (*oblast*) of Serbia, whereas Vojvodina was an Autonomous Province (*pokrajina*) of Serbia. With the constitutional changes of 1953 powers of both Kosovo and Vojvodina were further reduced as they became de facto districts of Serbia. In 1963 Kosovo became for the first time an Autonomous Province of Serbia and in the period between 1963 and 1974 its status, together with that of Vojvodina, was constantly elevated and it gained many of the republican prerogatives (including the right to adopt its constitution).

¹² Citizenship Act of the Democratic Federative Yugoslavia. *Official Gazette of the Democratic Federative Yugoslavia*, 64/1945.

¹³ Law on Deprivation of Citizenship for Officers and Non-Commissioned Officers of the former Yugoslav Army Who do not Want to Return to the Homeland, and for the Members of Military Forces Who Have Served for the Enemy and have Defected Abroad. *Official Gazette of the Democratic Federative Yugoslavia*, 64/1945.

primarily on the principle of *ius sanguinis* (descent) and provided for legal continuity with the pre-war Yugoslav Kingdom citizenship (art. 35). Nonetheless, art. 25, para. 1 enabled acquisition of citizenship for members of one of the peoples of Yugoslavia (South Slavic ethnic groups) through presumption (Medvedović 1998: 26; Ragazzi and Štiks 2009: 340). Undoubtedly, this ethnocentric formulation complicated matters for many non-Slavic people, including non-Slavic people living in Kosovo, who, for reasons related to the destruction brought about by the war, could not prove their Yugoslav citizenship. Many other Albanians could not gain citizenship because of their factual or alleged collaboration with the occupation forces during the Second World War and thus had to flee to Albania or Turkey.

During the entire existence of Socialist Yugoslavia only three laws on citizenship were enacted (1945/46, 1964 and 1976). These corresponded to major constitutional changes at the federal level (Ragazzi and Štiks 2009: 341). The post-war Yugoslav citizenship legislation established a two-level or bifurcated citizenship. The 1946 Yugoslav federal citizenship law states that, 'every citizen of the People's Republic is simultaneously a citizen of the Federal People's Republic of Yugoslavia and every citizen of the Federal People's Republic of Yugoslavia is in principle citizen of a people's republic'.¹⁴ The last federal citizenship law in Yugoslavia (adopted in 1976),¹⁵ reasserted the primacy of *ius sanguinis* principle in acquiring Yugoslav citizenship, and made republic-level citizenship conditional upon federal citizenship (republican citizenship would be lost with the loss of federal citizenship). Republican laws on citizenship were enacted shortly after. Despite the fact that the republics had large competences in managing citizens' registers, voting registers, as well as issuing IDs and passports, the republic-level citizenship was not considered to be relevant until the process of dissolution of Yugoslavia started.

As far as Kosovo is concerned, its inhabitants were citizens of both Yugoslavia and Serbia. Their status within Serbia was regulated through the Citizenship Law of the People's Republic of Serbia of 1950¹⁶ and of the Socialist Republic of Serbia in 1965¹⁷ and 1979.¹⁸ After the constitutional changes of 1974, Kosovo became a Socialist Autonomous Province of both Serbia and the Socialist Federal Republic of Yugoslavia (SFRY)¹⁹ with enhanced competences at all levels of governance. Though Kosovo had its own constitution, it did not have a separate law on citizenship (the Law on Citizenship of the Socialist Republic of Serbia from 1979 regulated the status

¹⁴ Law on confirmation and amendment of the Law on citizenship of the Democratic Federative Yugoslavia of 23 August 1945. *Official Gazette of the People's Federal Republic of Yugoslavia*, 54/1946.

¹⁵ *Official Gazette of the Socialist Federal Republic of Yugoslavia*, No. 58 (1976).

¹⁶ *Official Gazette of the People's Republic of Serbia*, No.5 (1950).

¹⁷ *Official Gazette of the Socialist Republic of Serbia*, No. 13 (1965).

¹⁸ *Official Gazette of the Socialist Republic of Serbia*, No.45 (1979).

¹⁹ Though the 1974 Yugoslav constitution affirmed the full equality of all republics and autonomous provinces and irrespective of the fact that the latter had many republic-level competences, republics were defined as states (art. 3), whereas autonomous provinces were defined as democratic self-governing socio-political communities (art. 4). As such, Kosovo could not have a citizenship law of itself and for itself.

of the Kosovar population as well).²⁰ However, the newly formed institutions of Kosovo were the only competent authorities to issue Yugoslav passports for the residents of Kosovo with a distinct code (KA) of the issuing authority from that of Serbia,²¹ certificates of citizenship, and keep and manage the register of citizens, electoral register etc.²² In many aspects, this was a quasi Kosovar citizenship. The situation would, however, change drastically after 1989 when Kosovo's autonomy was forcibly abolished by Serbia and further complicated after the dissolution of the SFRY.

2.4 Citizenship in the third Yugoslavia, 1992-2006

After the dissolution of the SFRY, the Republic of Serbia and the Republic of Montenegro established the Federal Republic of Yugoslavia (FRY) with Kosovo as an integral part of Serbia.²³ Though FRY adopted a new constitution in April 1992, it did not enact a federal law on citizenship until 1996. In the meantime, citizenship issue was regulated by the 1976 SFRY citizenship law, and the respective Serb (1979) and Montenegrin (1975) republican laws.²⁴ Because of the overall political situation and the wars in Bosnia and Croatia, the right to citizenship in FRY in the period between 1991 and 1996 was marked 'by insecurity and discrimination' (Svilanović 1998: 244). Despite the lack of legislation to regulate the issue of refugees, thousands of people acquired citizenship, sometimes even at regular black market prices (Svilanović 1998: 244). Finally, on 16 July 1996 a new Law on Citizenship of the Federal Republic of Yugoslavia²⁵ was enacted, which entered into force on 1 January 1997.

It has been argued that one of the main aims of this new law was to establish legal continuity²⁶ between SFRY and FRY citizenship (Imeri 2006: 270; Knežević 1998:

²⁰ Though the 1976 Law on Citizenship of the Socialist Republic of Serbia does not mention its two autonomous regions, Kosovo and Vojvodina, art. 30 of the law stipulates that 'the present Law shall be applied uniformly on the whole territory of the Republic in accordance with art. 300, para. 1, item 1 of the Constitution of the Socialist Republic of Serbia'.

²¹ Interestingly, Yugoslav passports issued in Kosovo were written in Albanian as well as in Serbian and French.

²² Personal interview with Azem Vllasi, former communist leader of the Autonomous Socialist Province of Kosovo. Pristina, 12 October 2009.

²³ Kosovar Albanians were quick to react after the abolition of autonomy and to start a non-violent separatist movement, boycotting the official authorities and establishing their own institutions. Thus, on 2 July 1990 members of the dispersed Assembly of the Socialist Autonomous Province of Kosovo gathered in front of the Assembly building in Pristina and adopted a declaration elevating the status of Kosovo to an independent Republic and a year later (in October 1991) a referendum on independence was organised. Serbia condemned both actions and considered them as illegal actions and no foreign country, apart from Albania, recognised the independence of Kosovo in the early 1990s.

²⁴ *Official Gazette of the People's Republic of Montenegro*, No. 26 (1975) / 30 (1975).

²⁵ *Official Gazette of the Federal Republic of Yugoslavia*, No.33 (1996).

²⁶ This was part of a broader political strategy of Slobodan Milošević and his allies to consider FRY as the only successor state of the SFRY. Because of the lack of support from international community this

235). However, a closer observation of the law reveals that it established legal continuity with selective categories of the SFRY citizens in that it applied primarily to citizens of the Socialist Republic of Serbia and the Socialist Republic of Montenegro. The attempt to establish such legal continuity is also reflected in the 'Transitional provisions' (arts. 46-48) of the 1996 Law. Both Serb and Montenegrin citizens were considered FRY citizens *ex lege* regardless of their place of residence. Further, Yugoslav citizenship could be acquired also by SFRY citizens who had citizenship of another republic and who as of 27 April 1992 were residing in the FRY ('zero option' principle applied retrospectively), civil and military servicemen of the Yugoslav People's Army (JNA) and members of their immediate families (art. 47), as well as citizens of the SFRY who, by virtue of their national or religious or political affiliations and endeavours to observe human rights and freedoms, were forced to take refugee status on the territories of the FRY (art. 48, point 1).²⁷

As far as the territory of Kosovo and its population are concerned, the period between 1991 and 1998 can be considered a period of *de facto* statelessness for the majority of population. After 1989, Albanians in Kosovo were deprived of their basic political and civil rights and liberties. Autonomous Kosovo institutions were shut down, people were expelled from their workplaces, and schools and universities that taught in the Albanian language were closed. Thus, although they were legally citizens of the FRY, *de facto* they were stateless. The most targeted group at the beginning of 1990s were young people between the ages of 18 and 22 who wanted to leave the country to avoid serving the army (which meant going to fight in Bosnia and Croatia). Being unable to obtain a passport (which was made conditional upon the completion of military service),²⁸ many young Albanians emigrated illegally or using documents 'bought' on the black market. Following the abolition of the autonomy of Kosovo in March 1989 and the subsequent degradation of the position

became impossible and FRY had to apply for membership in UN (in November 2000) as one of the successor states of SFRY. However, following the logic of legal continuity, FRY authorities continued issuing SFRY passports until late 1990s.

²⁷ This category includes Serb refugees from Croatia and Bosnia. According to the UNHCR information bulletin for Federal Republic of Yugoslavia, during the war in Bosnia and Croatia over 1 million people found refuge in the FRY. Though the 1996 FRY Citizenship Law did not imply ethnic discrimination, the interpretation of the transitional provisions of the law in practice went in favour of ethnic Serbs and Montenegrins. According to data provided by the Ministry of Interior, in less than one year after the entry into force of the FRY Citizenship Law (November 1998), some 83,000 applications (100,000 persons) had been submitted by refugees, of which 25,500 (42,000 persons) had been granted citizenship (UNHCR 2000): see also Knežević 1998: 235 and UNHCR 2000.

²⁸ Those same people who left Kosovo in the 1990s had problems later in renouncing Yugoslav citizenship for the purpose of acquiring another citizenship precisely because of the military obligation. This practice was reaffirmed in the 1996 Law on Yugoslav Citizenship, where art. 20 point 2. forbids loss of citizenship by release for 'persons subject to military conscription, if the federal authority in charge of defence affairs determine that there are impediments for release related to military obligation': see also Sivilanović (1998: 251).

of Albanians, a new 'parallel system'²⁹ was emerging among Kosovar Albanians. Underground 'state institutions', a separate system of education where children were taught only in Albanian, a network of information, as well as a network of health centres were established and functioned independently from the Serbian state.

The situation of the majority of the population of Kosovo in the 1990s can best be described by the terms exclusion and self-exclusion. The former included widespread discrimination against ethnic Albanians and their effective removal from the public life by the Serbian state and its police apparatus. The latter term describes the permanent boycott of the Serb and Yugoslav institutions and elections in Kosovo by Albanians. By the end of the 1990s, following the escalation of the conflict in Kosovo, more than 850,000 Kosovar Albanian refugees escaped or were deported into neighbouring countries and hundreds of thousands of others were internally displaced persons (UNHCR, 1999a). In the meantime, the destruction of identity and property ownership documents of those who were deported became widespread (UNHCR, 1999b). This deportation en masse of people and confiscation of their personal documents was a deliberate attempt by the Serbian state to deprive Kosovar Albanians of key citizenship rights, including the rights to property and residence. It was the sheer scale of the human right violations being committed in Kosovo which led to the military intervention of the North Atlantic Treaty Organization (NATO) in the FRY in spring 1999.

2.5 Kosovo residents under international administration, 1999 - 2008

On 10 June 1999, after 78 days of the NATO campaign in the FRY,³⁰ the UN Security Council adopted Resolution 1244³¹ which obliged the FRY to begin and to complete a verifiable phased withdrawal of all military, police and paramilitary forces from Kosovo. The Secretary-General, with the assistance of relevant international organisations, was to establish an international civil presence in Kosovo in order to provide an interim administration under which the people of Kosovo would enjoy substantial autonomy within the Federal Republic of Yugoslavia (art. 10). As the displaced Albanians returned home, many non-Albanian residents of Kosovo left the country or were driven out into neighbouring countries.³² The post June 1999 political reality in Kosovo created legal obscurity and problems with regard to various legal issues, including citizenship. Resolution 1244 vested all legislative and

²⁹ For more on the parallel system of Kosovar Albanians in 1990s, see Maliqi 1998; Judah 2000; Clark 2000; Kostovicova 2005.

³⁰ NATO's military campaign was initiated following the refusal of the FRY to accept the internationally brokered peace plan, the Rambouillet Accords, as an interim solution for Kosovo. This plan, which foresaw large scale autonomy for Kosovo as part of the FRY, on the other hand, was approved and signed by the political leaders of Kosovo.

³¹ *UNSC Res 1244 (10 June 1999) UN Doc S/RES/1244.*

³² There is no exact number of the Serb and Roma refugees from Kosovo and very often numbers are used for political propaganda. However, according to the UNHCR, almost 200,000 Serbs and Roma left Kosovo after June 1999. See UNHCR 2000.

executive powers, including administration of the judiciary, in the hands of the Special Representative of the Secretary General (SRSG). The SRSG and the United Nations Interim Administration Mission in Kosovo (UNMIK)³³ initiated the process of creating separate Kosovar institutions in all the three fields of governance: legislative, executive and judicial. With the time UNMIK transferred these responsibilities to the local institutions.

In 2001 the SRSG even promulgated a Constitutional Framework for Provisional Self-Government in Kosovo³⁴ which defined Kosovo as 'an entity under interim international administration, which with its people has a unique historical, legal, cultural and linguistic attributes.' This document, which makes no mention of the FRY, was considered unacceptable by the FRY institutions (Stahn 2001: 543-544). Though the FRY had no control over Kosovo, internationally Kosovo was still part of the FRY and its inhabitants were legally Yugoslav citizens. This situation led to the creation of two categories of people: the first category comprised people who were born before 1999 and who had Yugoslav documents; the second category included people who were born after June 1999 and who had no opportunity to be entered into the Yugoslav register of citizens. In other words, they were stateless.

Thus, UNMIK, the institution mandated to administer Kosovo until the final status settlement, decided to create a separate civil register (Central Civil Register of Kosovo) for the Kosovo residents. UNMIK adopted Regulation No. 2000/13 on the Central Civil Registry³⁵ which in a way became a substitute for citizenship regulations. According to art. 1.1 of this regulation, 'the Central Civil Registry shall contain a register of the habitual residents of Kosovo.' The term 'habitual resident' was used to describe residents of Kosovo. The two main categories of people that were to be considered habitual residents of Kosovo were: (a) persons born in Kosovo or who have at least one parent born in Kosovo; and (b) persons who could prove that they had resided in Kosovo for at least a continuous period of five years. Section 4 of this regulation also established the procedures for application to be entered into the Central Civil Register of Kosovo. Because most of the pre-1999 civil registration books were destroyed or confiscated by the FRY administration and because many people had their personal documents destroyed, procedures for application for habitual residency in Kosovo were quite simple. State identity cards, passports, documents issued by any UN agency or organ, documents issued by educational, health, political and religious institutions, public utilities and other quasi-official bodies, as well as oral and written statements, could be all used to prove residency.³⁶

³³ For a detailed account of the UN administration in Kosovo, its structure, competences and policies, see Reka 2003 and Stahn 2001.

³⁴ *UNMIK/Reg/2001/9*.

³⁵ *UNMIK/REG/2000/13*.

³⁶ Since there was evidence that many people used false documents, UNMIK adopted two additional administrative directions on the implementation of the UNMIK Regulation 2000/13 on Central Civil Registry. *UNMIK/DIR/2003/26 and UNMIK/DIR/2002/16*.

In 2000 UNMIK went a step further and promulgated a Regulation on Travel Documents.³⁷ Art. 1.1 of this regulation stipulated that all persons registered in the Central Civil Registry having the status of habitual residents may apply to the same institution for a travel document. Despite the fact that this travel document performed the function of passport, it was not strictly speaking a passport. Art. 1.2 of the UNMIK Regulation on Travel Documents clearly determines that the travel document does not confer nationality (i.e. citizenship) upon its holder, nor does it affect in any way the holder's nationality. Thus, a person could have a UNMIK Travel Document and any other state passport without a problem. In practical terms, the UNMIK Travel Document was a poor substitute for state passports because only 37 countries officially recognised it, thus creating travel-related obstacles for their holders. In this way, UNMIK put in place a system of quasi citizenship in Kosovo. In the period between 2000 and 2008 UNMIK issued some 600,000 Travel Documents for Kosovo residents and around 1,600,000 ID cards.³⁸ The absolute majority of these documents belonged to Albanians as Serbs kept their Yugoslav / Serbian documents. Through its parallel structures in Kosovo or municipal offices in Serbia, Serbian authorities continued to issue passports for Albanians as well even after 1999. In the course of eight years (1999-2007) Serbian authorities claim to have issued 200,000 passports for Kosovo residents.³⁹

Despite the fact that Albanians in Kosovo did not consider Serbia as their own state and were looking forward to independence, nevertheless, they kept applying for Serbian passports for practical and pragmatic reasons. In principle, Kosovar habitual residence and Serbian citizenship⁴⁰ were not in contradiction. However, during the international administration in Kosovo, most of the Albanians in Kosovo were de facto stateless whereas Kosovo Serbs had Yugoslav and later Serbian citizenship alone.

2.6 Kosovar citizenship after independence

After more than fifteen months of negotiations between Serbia's and Kosovo's delegations presided over by the Special Envoy for Kosovo, Martti Ahtisaari, on 14 March 2007 the Final Comprehensive proposal for a Kosovo Status Settlement, as well as the Report of the Special Envoy of the Secretary-General on Kosovo's Future

³⁷ UNMIK/REG/2000/18

³⁸ Data provided by the Center for Documents (Ministry of Internal Affairs of Kosovo). Personal interview in the Center for Production of Documents (MIA). Pristina, 12 October 2009.

³⁹ See AFP, *Kosovo Albanians shun Serbia, but not its passports*. 8 September 2007. www.balkanpeace.org.

⁴⁰ The Federal Republic of Yugoslavia was reconstituted as the State Union of Serbia (with Kosovo as its part) and Montenegro in 2003. In 2004 Serbia adopted a new citizenship law, which does not provide any specific provision for the residents of Kosovo neither it does take into consideration the new reality in Kosovo. In 2006 Montenegro, which in 1999 had approved its new citizenship law in open collision with the FRY 1996 Citizenship Law, left the Union and declared its independence. Thus, after this period Kosovar residents were in principle Serbian citizens only. See Law on Citizenship of the Republic of Serbia 2004. *Official Gazette of the Republic of Serbia*, No. 135/04.

Status were handed to the Secretary General of the United Nations. Ahtisaari proposed internationally supervised independence for Kosovo and in his proposal he laid down the contours of the future Kosovar state. Kosovo, the US and most of the EU countries supported the plan whereas Serbia and Russia opposed it. According to the Ahtisaari's proposal, Kosovo should be a multi-ethnic society based upon the equality of all citizens and the highest level of internationally recognised human rights and fundamental freedoms, as well as the promotion and protection of the rights and contributions of all its communities and their members. The newly adopted legislation set up the contours of a de-ethnicised citizenship, both at the micro and macro level. As far as citizenship, understood as a link between the individual and the state, is concerned, the boundaries of the new polity were to be established not according to the principle of origin, but territory. Art. 1.6 of the Annex I (Constitutional Provisions) makes it clear that the future Kosovar Constitution should provide for the right of all citizens of the former Federal Republic of Yugoslavia habitually residing in Kosovo on 1 January 1998 and their direct descendants to have Kosovo citizenship regardless of their current residence and of any other citizenship they may hold. Following almost a year of unsuccessful discussions at the UN Security Council on the adoption of a resolution that would endorse Ahtisaari's Proposal, on 17 February 2008, Kosovo declared independence.

On the other hand, with regard to the other dimension of citizenship which involves institutions, rights and practices, the Kosovo legislation provides extensive rights through which people of Kosovo, irrespective of the ethnic origin, can exercise full membership of the political community. Art. 2 of the Declaration of Independence, defines Kosovo to be 'a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law' and expresses the commitment 'to protect and promote the rights of all communities in Kosovo and create the conditions necessary for their effective participation in political and decision-making processes.' Subsequently, inhabitants belonging to the same national or ethnic, linguistic, or religious minority groups traditionally present on the territory of Kosovo (*communities*) were granted specific rights, including reserved seats in the parliament and other levels of governance. On the basis of the gender equality principles, the quota for women in the Kosovar parliament is 30 per cent. In addition to this, the new legislation provides for further group-differentiated rights related to territorial self-government; creation of the new Serb-dominated municipalities is one of the main issues in the post-independence political agenda in Kosovo.

Bearing in mind the long period of *de facto* statelessness in Kosovo and taking into consideration the urgent need to regulate citizenship status of the people in Kosovo, the Parliament of Kosovo adopted a new citizenship law⁴¹ on 20 February 2008, just three days after the declaration of independence and even before the adoption of the constitution. The Kosovar Law on Citizenship is one of those laws

⁴¹ Law on Citizenship of Kosovo. *Official Gazette of the Republic of Kosovo*, No. 26/2008.

belonging to the 'Ahtisaari package' and as such it was adopted in a fast-track procedure.⁴² Though there has not been any kind of public debate before or after the approval of this law, it is evident that the external influence in drafting of all new laws was essential. In the case of the Law on Citizenship of Kosovo, legal advisers of the ICO-EUSR preparatory team⁴³ were involved extensively. European legal advisers involved in the process looked at various citizenship practices in the region and elsewhere and their main aim was to draft a law that enabled wider inclusion into Kosovar citizenship. Undoubtedly, the relatively high inclusive nature of the present Kosovar citizenship legislation resulted from Ahtisaari's provisions, as well as from UNMIK legislation, which has been taken in consideration largely by experts drafting the Kosovar law.

Because the process of the initial determination of citizenry is currently under way in Kosovo, I find it more appropriate to discuss it in the following section rather than in the section dedicated to historical background. Undoubtedly, this fact singles out Kosovo even more from other post-Yugoslav states.

3 The current citizenship regime

The Kosovar citizenship regime is a reflection of the principles of multi-ethnicity and inclusiveness enshrined in the Ahtisaari's plan, the Declaration of Independence and the Kosovar Constitution. In terms of criteria of inclusion, pursuant to art. 1.6 of Annex I of the Ahtisaari Plan, the Kosovar Law on Citizenship enables all pre-war residents of Kosovo (who were citizens of the Federal Republic of Yugoslavia) and their direct descendants to be considered as citizens of Kosovo (arts. 29.1 and 29.2). This provision addresses the problem of the refugees who left Kosovo in 1999 and were not registered as habitual residents during the international administration in Kosovo. In a similar vein, the new law provides that any habitual resident of Kosovo based on UNMIK/Reg/2000/13 is considered *ex lege* a citizen of the Republic of Kosovo (art. 28.1). These two provisions more or less define the scope and character

⁴² Initially the Parliament of Kosovo created an ad hoc commission that would examine all the draft laws deriving from the 'Ahtisaari package' and based on the proposal of this commission, the parliament adopted these laws. Only minor amendments were proposed during the parliamentary session. So, in a single day, on 20 February 2008, the Parliament of Kosovo adopted nine laws deriving from 'Ahtisaari package', including the Law on Citizenship of Kosovo. As is apparent from the written transcript of the plenary session, none of these draft laws, including the one on citizenship, were debated before approval. At the end, 77 MPs voted 'for' the package of laws, four were 'against' and six MPs abstained. See Parliament of Kosovo, *Transcript of the Plenary Session of 20 February 2008* (<http://assembly-kosova.org/?cid=1,177&date=2008-02-20>).

⁴³ The purpose of the ICO-EUSR (International Civilian Office – EU Special Representative) preparatory team was to plan for a possible future international civilian presence in Kosovo after settlement of Kosovo's final status. The office of ICO-EUSR was established immediately after the declaration of independence of Kosovo. Its main aim is to ensure full implementation of Kosovo's status settlement and support Kosovo's European integration. Otherwise, its mission and mandate was laid down in Ahtisaari's plan. For more, see www.ico-kos.org.

of citizenship in Kosovo, including the body of citizens, inclusiveness, and openness. The latter provision especially facilitates greater inclusiveness when taking in consideration that the procedures for admission into the Kosovar Central Civil Register under UNMIK were simple and many people (especially Albanians from southern Serbia and Macedonia) profited from this opportunity to regularise their status. Both of these provisions were reaffirmed in the Constitution of the Republic of Kosovo,⁴⁴ which entered into force on 15 June 2008.

In terms of the procedures, the basic characteristics of the Kosovar citizenship law are a combination of *ius sanguinis* and *ius soli* principles, prevention of statelessness, absence of provisions granting ethnic preferences, and gender equality of parents who decide about the naturalisation of the child as well as gender equality of spouses. Another crucial characteristic of this law is the unconditional recognition and acceptance of dual and multiple citizenship. Yet a more particular characteristic of the Kosovar citizenship law is that it contains some transitional provisions regulating acquisition of citizenship, namely through arts. 28 and 29 of the law which refer to the acquisition of citizenship by FRY citizens who were Kosovo residents before 1 January 1998 and habitual residents of Kosovo (1999-2008). Persons belonging to the first category can become citizens of Kosovo by registration whereas those belonging to the second category become Kosovar citizens *ex lege*. Though this law foresees facilitated naturalisation for people from the diaspora, it does not define or differentiate them on the basis of ethnicity. According to the law, all people (and their descendants within one generation) who have legal residence in foreign countries and who can prove that they were born and/or maintain family ties in Kosovo are considered to be members of the Kosovar diaspora.

3.1 Acquisition and loss of citizenship

3.1.1 Acquisition of citizenship

Kosovar citizenship is acquired by birth, adoption, naturalisation, on the basis of international treaties and on the basis of transitional provisions. Based on the principle of descent, a child acquires citizenship automatically in cases when both of his or her parents have Kosovar citizenship (in this case *ius soli* does not apply). However, if on the day of the child's birth only one of the parents is a citizen of Kosovo, the child may acquire Kosovar citizenship under the following conditions: a) the child is born in the territory of Kosovo (here we have a combination of *ius soli* and *ius sanguinis*) principles); b) the child is born abroad and one parent is stateless or his or her citizenship is unknown; and c) the child is born abroad and only one parent has Kosovar citizenship but both of them give their consent before the child reaches the age of 14. In the case when the consent of parents is needed, the law has retroactive effect.

⁴⁴ See art. 155 of the Constitution of the Republic of Kosovo.

The *ius soli* principle applies in cases of unknown parents of the child born or found in Kosovo. However, if one of his/her parents, who does not have Kosovar citizenship is found before the child reaches the age of 7, upon the parent's request the citizenship of the child may be forfeited. The territorial principle is also applied in cases when a child is born in the territory of Kosovo and his or her parents have foreign citizenship but have valid legal permission to reside in Kosovo and, most importantly, give their consent. So, here we have a conditional application of the *ius soli* principle in that the consent of parents is crucial in this case. Acquisition of citizenship by adoption is based on the principle of descent and a child adopted by parents who have Kosovar citizenship acquires the same rights as a natural child. But the law is not explicit in determining cases of adoption when only one parent is a Kosovar citizen.

Kosovar citizenship law provides for regular, facilitated and exceptional naturalisation. Regular naturalisation is used for all foreign persons who apply through the regular procedure for naturalisation. Facilitated naturalisation is a special procedure applied to the Kosovar diaspora,⁴⁵ meaning persons who were born in Kosovo (irrespective of their ethnicity) and who are legal residents of other states as well as their first generation of descendants. Finally, exceptional naturalisation is applied in cases of special economic, social, sports, cultural, scientific or political interest of the Republic of Kosovo and is issued by the decree of the President of Republic.

As far as regular naturalisation is concerned, there are six main criteria that foreign persons intending to become citizens of Kosovo must meet. These are to be an adult, to possess a valid residence and to be able to prove five years of residence (with the possibility of having been abroad for periods not longer than three months) in Kosovo, to accept the constitutional and legal order of the Republic of Kosovo and to be integrated into the society, to have sufficient means of living without resorting to social assistance schemes, to fulfil all the financial obligations owed to the state, and to possess an elementary knowledge of one of the official languages of Kosovo (Albanian or Serbian). In the case of the naturalisation of spouses, the person married to a Kosovar citizen is required to have resided in Kosovo for one year and to show that he or she has been married to a Kosovar citizen for at least three years. Both natural and adopted minor children acquire Kosovar citizenship once his or her parent has acquired it. More or less the same facilitated procedure applies also in

⁴⁵ Apart from this facility, the Kosovar diaspora, estimated to number around 415,000 persons (315,000 Albanians and 100,000 other ethnic groups), does not enjoy any special rights in Kosovo. As Kosovar citizens they can vote either by coming to Kosovo or by post. The Kosovar Parliament has special seats reserved for minorities but not for the diaspora. In terms of the institutional organisation, the mechanism responsible for diaspora is the Office for Non-Residential Issues and Diaspora within the Government of Kosovo. This office lacks both human and material resources and it has not been given any higher importance, despite the fact that the Kosovar diaspora is quite big and it played an important role in the past (when it provided essential financial support for the Kosovar Albanian political and military movement in 1990s) and today provides substantial economic support in form of remittances. For more information on the Kosovar diaspora see Mustafa et al. 2007.

relation to those persons who have lost Kosovar citizenship and who want to re-acquire it. In those cases, individuals need to declare that they accept the constitutional and legal order of Kosovo, possess sufficient means for living and prove the fulfilment of all the financial obligations toward the state.

Apart from the aforementioned criteria for naturalisation, the law sets out additional general provisions on the naturalisation of foreign persons. Without prejudice to the specific criteria for naturalisation, no foreign citizen is allowed to acquire Kosovar citizenship if he or she has been sentenced for a criminal offence⁴⁶ or if the acquisition of citizenship is contrary to the interests of Kosovo, in particular interests related to the internal and external security of Kosovo. By the same token, the competent body will suspend the naturalisation procedure if the applicant is subject to criminal investigation or criminal court proceedings until the investigation or proceeding is completed. A more drastic measure – revocation of the decision on naturalisation – may be taken if the competent authority establishes that the decision was issued on basis of false statements or the concealed facts. In the event of revocation of the decision on naturalisation of the parents, the minor child will be subject to revocation of the decision on his or her naturalisation as well. The Kosovar Law on Citizenship does not provide any further explanation on the acquisition of citizenship based on international treaties.

As far as statistics are concerned, little data is available since the Kosovar Office of Citizenship was only established in April 2009. According to the data provided by the Office of Citizenship, in the first six months some 90 people applied for acquisition of citizenship and 20 of them had their applications approved.⁴⁷ Most of those people were Albanians from South Serbia or Macedonia who had been residing in Kosovo for more than five years. They applied for regular naturalisation.

3.1.2 Modes of loss of citizenship

A citizen of Kosovo cannot be deprived of his or her citizenship of Kosovo except in compliance with the rules set out in the law. According to the law, there are three modes of losing citizenship: by release, by deprivation and based on international treaties. Release from citizenship is a regular case of losing citizenship and is initiated upon the request of the citizen. In addition, the person asking for release should fulfil certain requirements, such as possession of citizenship of another state or a guarantee that he or she will acquire one, fulfilment of all financial obligations towards the state and freedom from any criminal investigation or proceedings. Also minors and adopted minors under fourteen are released from citizenship if this is requested by both parents who have been released from citizenship or in cases when one parent

⁴⁶ This does not include criminal offences punished with a fine or six months of imprisonment (if released on parole by court), sentence for criminal offences that are not considered as such in Kosovo, and sentences for criminal offences that has been legitimately expunged from criminal records.

⁴⁷ Personal interview in the Office for Citizenship within Ministry of Internal Affairs of the Republic of Kosovo. Pristina, 13 October 2009.

was released from citizenship and other parent is not citizen of Kosovo. Apart from release, competent authorities can issue a guarantee that the applicant will be released from Kosovar citizenship once it is shown that he or she has acquired another citizenship or has such a guarantee. The guarantee is valid for two years from the day it is issued to the person.

There are two situations when applications for release may be refused. The first case is where the person who asks for release from citizenship is a civil servant, judge, public prosecutor, or a member of the police service or Kosovo Security Forces. The second case is when the release is considered to be against the interests of the state, especially related to its internal and external security or international relations. A more drastic measure is the revocation of the decision on release from citizenship, which is applied in cases when the competent authority determines that the decision on release was taken on the basis of false statements or concealed facts.

Deprivation of citizenship is a measure used only in those cases when a citizen is engaged in activities which pose a threat to the national security of Kosovo. This measure may be applied if the person holds citizenship of another country. Threats to national security are considered membership of organisations the purpose of which is to destroy the constitutional order of Kosovo, engagement in activities related to that purpose, or membership of foreign intelligence or police services that function illegally on the territory of Kosovo.⁴⁸ The decision on deprivation may be issued even without the participation of the person in question. In cases where the person in question participates, the decision on deprivation becomes effective when delivered to him or her. Otherwise, the decision becomes valid on the day it is published in the Official Gazette of the Republic of Kosovo.

In terms of statistics, the number of people who have applied for release from citizenship is quite large. In the period between April and October 2009, some 1600 Kosovar citizens filed applications for release from citizenship and 540 lost their Kosovar citizenship through release.⁴⁹ The absolute majority of those people come from the Kosovar diaspora in Europe, especially from those countries that do not allow dual citizenship.

3.1.3 Dual and multiple citizenship

Kosovo legislation is very tolerant of dual and multiple citizenship. Indeed, the present legislation does not oblige any person to lose his or her citizenship in order to acquire Kosovar citizenship. As already mentioned, this measure was introduced mainly to accommodate the needs of the Serb minority in Kosovo (but also many Albanians living in diaspora in Europe and the US). Though the present number of

⁴⁸ In principle, this clause would apply in cases of those Kosovar citizens of Serb ethnicity that are members of Serbian police and intelligence services that operate in Kosovo illegally. So far there has not been a single known case when this clause has been used in practice.

⁴⁹ Personal interview in the Office for Citizenship within Ministry of Internal Affairs of the Republic of Kosovo. Pristina, 13 October 2009.

Kosovar residents who are citizens of two or more countries is not known, it is realistic to assume that the majority of Serbs living in Kosovo (the approximate number of Serbs living in Kosovo is 130,000) will eventually have dual citizenship. Other Serb and Roma refugees from Kosovo who are residing in neighbouring countries and who might return in Kosovo may increase the number of dual citizens even further. In addition, many Albanians from southern Serbia, Albania, Macedonia and Montenegro who have moved to Kosovo to work, study or live in the course of last decade either have already been registered as habitual residents during the UNMIK period (and now are considered Kosovar citizens) or will apply for Kosovar citizenship through regular naturalisation since many of them satisfy the criteria. At the same time, members of the Kosovar diaspora⁵⁰ who hold citizenship of foreign countries that allow dual citizenship are very likely to apply for Kosovar citizenship.

Thus, one might realistically predict that at the end of post-independence transition in Kosovo and after completion of the process of registration of population and creation of a unified and consolidated register of citizens, the number of Kosovo citizens who hold dual citizenship will be relatively high (up to 20 per cent of the overall population).

3.2 Transitional provisions

Undoubtedly, transitional provisions governing the acquisition of citizenship are crucial in the post-independence phase during the determination of the initial body of Kosovo citizens. These provisions aim to regulate the status of Kosovo residents before January 1998 and habitual residents in the period of international administration in Kosovo (1999-2008). In the case of the former, individuals who on 1 January 1998 were citizens of the FRY and were habitually residing in Kosovo, and the first generation of their descendants, will be registered in the register of citizens upon the application. According to the law, the criteria that will constitute evidence of the citizenship of FRY and habitual residence in Kosovo will be determined in sub-normative acts (i.e. delegated legislation).⁵¹ However, the law makes it clear that the competent body can also use the UNMIK Regulation No. 2000/13 as criteria to determine habitual residence on 1 January 1998. In the case of habitual residents of Kosovo, however, everyone who is registered in the Central Civil Register pursuant to UNMIK Regulation No. 2000/13 will be considered a citizen of Kosovo and will be registered in the register of citizens. The competent body is allowed to verify the lawfulness of the registration of a person as a habitual resident in Kosovo, and in

⁵⁰ According to the officials from the Kosovo Citizenship Office, there is a growing number of Albanians from Turkey, most of whom are first or second generation of Albanian migrants that recently are applying for Kosovar citizenship.

⁵¹ The Ministry of Internal Affairs of Kosovo has already adopted an administrative instruction 'On Requirements Composing Evidence of Citizenship of the Former Federal Republic of Yugoslavia and Permanent Residence in the Territory of Kosovo on 1 January 1998.' See *Ministry of Internal Affairs. Administrative Instruction*, No. 05/2009.

cases where the competent body determines that the person did not fulfil the legal requirements for registration as habitual resident, he/she will lose Kosovar citizenship and will be deleted from the register of citizens.

3.3 Jurisdiction and procedures

In Kosovo, the Ministry of Internal Affairs (MIA) is the main body that has jurisdiction over citizenship issues. In the same vein, the government, through the MIA, has executive competence with regard to specific conditions and rules of procedure for acquisition and loss of citizenship. So far, the MIA has adopted numerous administrative instructions to facilitate implementation of the citizenship law. Although applications should be filed in the Municipal Offices of Civil Status, it is the Office of Citizenship within the MIA that takes the final decision on acquisition or loss of citizenship. In March 2009, the MIA adopted an administrative instruction on establishment and determination of the procedure rules of the Committee of Citizenship and of the Appeals Committee of Citizenship.⁵² These two committees form the Office of Citizenship of Kosovo, which became functional on 29 April 2009.

There are two main ways to submit the application: a) to the municipal administration, in the territory of which the applicant resides; and b) if the applicant resides outside Kosovo, to the nearest embassy or consular mission⁵³ of Kosovo. However, both these institutions should forward the application to the competent body in Kosovo, which is the Citizenship Office.

According to the present legislation, the procedure for acquisition of citizenship through naturalisation and release from citizenship is relatively simple and short. Once the application has been submitted to the municipal administration, the latter forwards it to the Citizenship Office. From the day the application arrives to the Citizenship Office, the Committee of Citizenship (which has three members) shall take a decision within thirty days. If necessary, this committee may invite the requesting party to submit additional written or oral evidence in support of his or her application. The Committee takes decisions by consensus or majority vote, if need be. The decision of the Committee of Citizenship, with full reasoning, is published as a separate definition signed by the Chairman of the Committee.

In cases where the requesting party is not satisfied with the decision, he or she can appeal the decision to the Appeal Committee of Citizenship within thirty days from the date of publication of the decision. Then, after reviewing all the facts, the Appeal Committee is obliged to make a decision within thirty days. This decision of the Appeal Committee is final within the context of the administrative procedure, but it can be subject to court review in compliance with the laws in force. Fees are determined by the law and are relatively low (150 Euro for adults and 50 Euro for

⁵² See *Ministry of Internal Affairs. Administrative Instruction*, No. 06/2009.

⁵³ Since the consular missions and embassies of Kosovo abroad are not yet fully functional, currently applications can be filed only in Kosovo.

minors, both for acquisition of citizenship through naturalisation and release from citizenship).

One of the most recent pieces of secondary legislation approved by the Ministry of Internal Affairs of Kosovo is the Administrative Instruction on the Registry of Citizenship of Kosovo.⁵⁴ This register shall contain details of all the Kosovar citizens, and according to the law, it is kept both by the MIA and the Municipal Offices of Civil Status. This register is unique and is kept both in written form and electronically. Apart from the basic register which contains data related to births, marriages and deaths, the MIA also keeps special evidence of those individuals who acquire citizenship by naturalisation and on the basis of international agreements, as well as evidence of the persons who lose citizenship by release, revocation or on the bases of international agreements. The competent authorities which keep the register of citizens may transmit the data also to other people who according to the law are authorised to have access to it. Data can also be transmitted upon the consent or request of the person in question.

The Ministry of Internal Affairs of Kosovo can also communicate to other state organs information about the citizenship status of registered citizens of Kosovo. This information will be transferred provided that it will be used only by an organ of another state competent for citizenship issues, it is in the favour of the person whose data is being requested, and that the requesting organ guarantees the protection of the citizenship status for foreign citizens as well.

4 Current political debates

Various aspects of citizenship became part of the political debates initiated in Kosovo following its declaration of independence. In general, debates around citizenship are part of broader debates related to state-building and the consolidation of Kosovo statehood.

The most pressing issue for the moment, which causes many citizenship-related problems and debates, is the issue of the consolidation of the body of citizens. The issue is both political and technical and these aspects are interconnected. The political aspect of this problem stems from the very fact that Kosovo as state and its citizenship are still not accepted by a number of Kosovar residents, namely the Serb community.⁵⁵ In turn, this poses serious problems in relation to the process of the practical consolidation of the body of citizens in the new country despite the fact that the new citizenship legislation put in force following the declaration of independence of Kosovo is consolidated and precise.

⁵⁴ See *Ministry of Internal Affairs. Administrative Instruction*, No. 16/2009.

⁵⁵ The number of Kosovar Serbs who applied for and obtained Kosovar documents is increasing. According to the data provided by the Ministry of Internal Affairs of Kosovo, as of September 2009, some 10,000 Serbs have obtained Kosovar documents (IDs or passports). See 'Mbi 10 mijë shtetas të nacionalitetit serb pajisen me letërnjoftime [More than 10 thousand Serbs receive IDs]', *KosovaLive*, 24 September 2009. www.kosovalive.com

The technical aspect of the problem is mostly related to the lack of a consolidated database that includes all citizens and persons living in Kosovo. The factors that brought about this situation are manifold. To start with, the last general census in Kosovo was organised in 1981. In 1991, Serbia organised a census in Kosovo but it was boycotted by ethnic Albanians in protest against Serbia's revocation of Kosovo's autonomy. Additionally, voluntary and forced movements of people throughout 1990s, massive deportation of people during 1999 and the migratory path of many post-war refugees went almost entirely unrecorded. UNMIK's initiative to register people in 2000 was a poor substitute for a census, as it allowed individuals to decide themselves in good faith to present themselves at the registration centres. Many individuals, mainly those from the ranks of the Serb minority, were not registered and today they do not appear in the registers of the Kosovar institutions.⁵⁶ Subsequently, data related to the cases of births, marriages and deaths of Serbs living in those areas that are controlled by ethnic Serb parallel structures supported and financed by Belgrade, was not accessible either for the UNMIK or for Kosovar institutions. In addition, many registration books were either destroyed or confiscated during the war by the Serb forces, thus leaving municipal administrations sometimes even without back-ups. The full registration of population (including those living abroad), property, and businesses is planned for 2011. By that time, the MIA plans to have a completed digitalised database of Kosovar citizens living in Kosovo or abroad.

The above-mentioned problems surrounding civil registration and consolidation of citizens' register are intrinsically related to what Linz and Stephan refer to as 'stateness' problem, which is the existence of a significant proportion of the population that does not accept the boundaries of the territorial state and question its legitimacy (2001 [1992]: 200). In this case, the boycott by Serbs of the civil registration organised by UNMIK in 2000 and most importantly, the boycott of Kosovar institutions by residents in some Serb-inhabited areas have complicated the government's attempts to consolidate an autonomous Kosovar citizenship. Nonetheless, the participation of Serb residents of Kosovo in the first post-independence municipal elections in Kosovo on 15 November 2009 in considerable numbers, which led to the creation of three additional (out of five that were foreseen in Ahtisaari's plan) Serb-dominated municipalities in Kosovo, is seen by many as the first positive step toward integration of this community into the political system of Kosovo.

Another related problem is the issue of statehood and the format of the Kosovar state. Based on the content of the constitution and basic statehood laws, as well as the character of its symbols and the institutional design, Kosovo is at the same time a civic state (with elements of individual liberalism and republicanism) of

⁵⁶ According to the EULEX team providing mentoring, monitoring and advice to MIA's Civil Registration Unit, the number of unregistered people in Kosovo might go up to 100,000. Most of those people are registered only in the registration books of Kosovar residents kept in Serbia. Personal interview in EULEX Office within the Ministry of Internal Affairs of Kosovo, Pristina, 28 October 2009.

all the individual citizens (that are equal before the law) and a multi-ethnic state of different communities (Albanian, Serb, Roma, Turkish, Bosniak and Goran), with no clearly defined single nation, regardless of the fact that Albanians are overwhelmingly the majority of the population. This also raises serious question in terms of defining who is the, what Van Dyke calls 'right-and-duty-bearing unit' (1995: 31) – the individual or community?

A major issue related to citizenship that continues to be debated is the issue of non-Albanian refugees who left Kosovo after the war. In absence of the reliable data, numbers have been used and misused for political purposes. The fact that the exact number of people living in Kosovo in 1998 (before the war) is unknown complicates any attempt to calculate the number of people who left Kosovo in 1999. Notwithstanding the numbers, there are three categories of refugees from Kosovo: Serb refugees, the Roma, Ashkali and Egyptian (RAE) group, and 'double refugees' (Serb refugees from Croatia and Bosnia who were settled in Kosovo before 1998 and who might have left Kosovo again in 1999). Whereas the Serbian Government claims that the number of the Serbs who left Kosovo is around 250,000⁵⁷ and calls for their collective return, the counterpart in Kosovo has dismissed these claims as exaggerated and has established a strategy for gradual return and integration of refugees. The Kosovar Government has established a special ministry – the Ministry for Returns and Communities – in 2005 in order to facilitate the return and reintegration of these communities. This ministry, which is headed by a person from the Serb community, in cooperation with various local and international institutions and agencies, so far has created conditions and enabled return of some 18,900 non-Albanian refugees.⁵⁸

No exact numbers are available for the RAE people either. Most of them live as refugees in Macedonia, Montenegro and Serbia, or in Western countries. Recently the Kosovar government had adopted the Strategy for Integration of Roma, Ashkali and Egyptian Communities in the Republic of Kosovo 2009-2015⁵⁹, in order to improve the position of those already living in Kosovo and to create conditions for the return of the refugees. In fact, some Western states (Switzerland, Germany, and Austria) have either signed or plan to sign agreements with the Kosovar government for repatriation. Germany has already announced that it plans to return some 14,000 Kosovar refugees, the absolute majority of whom are from the ranks of RAE

⁵⁷ UNHCR estimated that the total number of non-Albanian refugees that left Kosovo in 1999 is 200,000. A report from European Stability Initiative estimates that the number of Serbs who left Kosovo is around 65,000. See ESI 2004.

⁵⁸ The number of refugees who have expressed the will to return in Kosovo as part of the return and reintegration strategy of the Kosovar Ministry for Return and Communities has increased after the independence of Kosovo. Only in the first 9 months of the year 2009, some 942 families (around 3845 inhabitants) have expressed their will to return. See: Personal interview in the Ministry of Return and Communities. Fushe-Kosove, 13 October 2009.

⁵⁹ Available at: <http://www.web-kfos.org/home/images/stories//rae-eng.pdf>

communities.⁶⁰ Most people (both the majority and the minorities) as well as media and experts in Kosovo have expressed reservations about the repatriation plans since the return of people from abroad will create further difficulties in relation to an already challenging economic situation.⁶¹ In addition, UNHCR has expressed concerns that many RAE voluntary or forced returnees are at risk of statelessness.⁶²

The third category of refugees, whose situation is less debated, is the category of the doubly displaced people. This is the category of Serb refugees from Bosnia and Croatia who were initially settled in Kosovo and who were then caught in the cross-fire during the war in Kosovo. The number of these refugees that were settled in Kosovo prior to 1998 is estimated to be around 14,000 (UNHCR, 2000). Of these, some 200-600 still live in Kosovo (UNHCR 2000: 2009). Based on Ahtisaari's package and the transitional provisions of the Kosovar Law on Citizenship, these Serb refugees from Croatia and Bosnia in principle are entitled to be considered Kosovar citizens. However, MIA's Administrative Regulation 05/2009 sets the criterion of five years of permanent residence in Kosovo before January 1998 plus possession of FRY citizenship to become a Kosovar citizen. Many refugees who came in Kosovo in 1994 or 1995 will fall short of the five years criterion of permanent residence. It is too early to predict how those cases will be handled.

The third and most debated issue with regard to citizenship in Kosovo is the one related to visa liberalisation and free movement. Despite the fact that Kosovo is part of Europe and hosts the biggest EU mission abroad (EULEX), it remains one of the most isolated countries on earth.⁶³ Many other countries, including two neighbouring ones, Serbia and Bosnia Herzegovina, do not recognise Kosovar documents. Hopes that Kosovo would profit more from a heavy EU presence perished in July 2009 when the European Commission proposed the introduction of new regulations on visas for Western Balkan countries.⁶⁴ This proposal, which was endorsed by the Council of the European Union on 30 November 2009,⁶⁵ allows citizens of Macedonia, Montenegro and Serbia to travel to all countries of the Schengen area without visas as of 19 December 2009. Kosovo as a country was left outside the visa liberalisation process for the Western Balkan countries. At least, the

⁶⁰ See 'Gjermania kthen 14 000 kosovarë [Germany returns 14,000 Kosovars]', *Radio Free Europe*, 14 October 2009. www.evropaelire.org.

⁶¹ For a detailed analysis of the RAE refugees, their living conditions in Kosovo and repatriation plans see Tmava & Beha 2009.

⁶² In the period from 2006 to 2009, under the UNHCR project for RAE civil registration campaign, some 8,118 RAE individuals were registered, whereas some 1,932 still are considered to be at risk of statelessness. See UNHCR 2009.

⁶³ According to an ESI working paper, holders of the Kosovar passports can travel to only 5 countries visa free: Albania, Montenegro and Macedonia, Turkey, and Haiti. Even citizens of Afghanistan – the lowest ranked country in the 2008 global Henley & Partners 'Visa Restriction Index' – can travel to more places without a visa (22). See: ESI 2009.

⁶⁴ See: Commission of the European Communities. *Proposal for a Council Regulation 2009/0104 (CNS)*. Brussels, 15 July 2009. www.eur-lex.europa.eu.

⁶⁵ See IP/09/1852. Brussels, 30 November 2009.

Commission's proposal to add Kosovo to the Schengen 'Black List', as a territory on whose status the EU as whole cannot yet agree, next to the Palestinian Authority and Taiwan, was seen by some as a positive sign that EU treats Kosovo separately from Serbia. According to the Commission's proposal and the EU decision, residents of Kosovo holding a Serbian passport issued by the Coordination Directorate in Belgrade will still need a visa to enter Schengen zone. This includes both Serbs and Albanians from Kosovo who have Serbian passports.⁶⁶

Regardless of the fact that the EU officials in charge of justice and security issues within European Commission have persistently argued that the evaluation was based on pure technical criteria, feelings and fears of being discriminated against have been raised suddenly among the residents of Kosovo who will be denied visa-free travel rights. Indeed, the differentiated treatment that Kosovo gets from the EU with regard to the visa liberalisation stems from a broader and deeper political problem related to the EU internal divergences and lack of consensus when it comes about its relation with Kosovo. The EU has officially adopted a 'status neutral' position toward Kosovo based on the UN Resolution 1244 (which means that the EU considers that Kosovo's status is not settled). Such treatment makes it impossible for Kosovo to have contractual relations with the EU, something that is a *sine qua non* for Kosovo's European perspective. Thus, with Macedonia, Serbia and Montenegro already on the Schengen 'white list' and Albania and Bosnia Herzegovina waiting to join the group most probably by mid or end of 2010, Kosovo will most likely remain a ghetto at the heart of Europe. With Kosovo Serbs finding ways to obtain a recognised Serb passport (by being registered as residents in Serbia proper), many Kosovar Albanians are afraid that they will be the only ones in the Western Balkans to wander around and wait for days and weeks in front of the foreign embassies in Pristina or in the neighbouring countries to get a visa. Consequently, given that the EU will propose a visa-free regime for Albania next year; many Kosovar Albanians might be encouraged to apply for Albanian citizenship so that they can travel visa-free to the EU. Thus, Albania may follow the example of Romania (with Moldavians), Croatia (with Croats in Bosnia), and Serbia (with Serbs in Bosnia, Montenegro and Kosovo) and issue passports for its co-ethnics in Kosovo.⁶⁷

⁶⁶ From August 2008 until July 2009 some 7,141 Kosovars obtained Serb biometric passports. However, in July 2009, following the European Commission's proposal, Serbia stopped issuing Serb passports for Kosovars and initiated the establishment of a specific Coordination Directorate in Belgrade that would issue passport for Kosovar residents. Accordingly, any Kosovar who wants to get a Serb passport must travel to Belgrade, which is not easy at all: Serbia recognizes neither Kosovo IDs nor Kosovar passports. Thus, everything has been done to make obtaining Serbian passport as hard as possible for Kosovar Albanians. See ESI 2009.

⁶⁷ However, European Commission officials in Pristina say that the EC has warned Albania that an unusual increase of the number of Kosovar Albanians with Albanian passports will have negative consequences on Albania's visa liberalisation process. Personal interview with the Head of the Political, Economic and European Integration Section (EC Liaison Office in Kosovo). Pristina, 27 October 2009.

In the absence of an EU roadmap for visa liberalisation for Kosovo, the Government of Kosovo has adopted its own Action Plan for Implementation of Roadmap on Visa Liberalisation Regime with the European Union (2009-2011). In the Council of the European Union meeting of 7 December 2009,⁶⁸ the Council stressed 'that Kosovo should also benefit from the perspective of eventual visa liberalisation (without prejudice to Member States' positions on status) once all conditions are met and invites the Commission to move forward with a structured approach to bring the people of Kosovo closer to the EU'. However, regardless of how optimistic this may seem, the EU has not determined either timelines or guidelines as to when and how Kosovo is going to approach visa liberalisation and EU integration. Generally speaking, the uncertainty around the EU's relationship with Kosovo, in spite of the EULEX mission that is supposed to help the proper functioning of Kosovo's institutions, may also undermine the efforts of Kosovar government to set up a modern and sustainable citizenship regime. Undoubtedly, issues related to the validity of the Kosovar passport and free movement opportunities are crucial in this context.

Conclusion

Without any doubt, the Kosovar citizenship regime is a regime in the making. As a 'new born' state, Kosovo is still in the process of initial determination of the citizenship and its body of citizens. Though the legal infrastructure that constitutes the cornerstone of the citizenship regime has been already put in place, implementation of the law and secondary legislation will take much more time and effort. By omitting any principle of ethnic preference, the new legislation in Kosovo affirms democratic statehood and liberal principles of citizenship as opposed to the ethnocentric state building. The main factor that contributed to such development is the involvement of international institutions and actors in the process of definition of Kosovo's final status and its core legislation. By defining Kosovo as 'a state of free citizens' and its society as 'a multi-ethnic society' the Kosovar Constitution sets the basis for a civic state. The formative character of the state of Kosovo becomes visible through the constitution, state symbols and anthem which represent a par excellence example of de-ethnisation of citizenship in a country that, above all, should be looked at as an attempt to found a new civic state based on a covenant (constitution). In terms of the initial definition of citizenship, Kosovo model comes close to the 'new state model'.

Citizenship was considered of paramount importance during the pre-independence negotiation process and even more so at the moment of the declaration of independence. The fact that the new citizenship law was adopted only three days after the declaration of independence and before the new constitution illustrates this

⁶⁸ See: Council of the European Union. *Press Release 17217/09 (Presse 370)*. Brussels, 7 December 2009. www.consilium.europa.eu.

fact. Since the aim of the new law was to create an all-inclusive citizenship regime, it thoroughly affirmed the principle of territory in defining initial citizenship. In those cases when the principle of origin is affirmed, it omits reference to ethnicity. Likewise, it provides for gender equality and allows dual and multiple citizenship. The latter measure is taken in compliance with the wide range autonomy extended to the minorities living in Kosovo, in particular Serb minority, and with attempts to integrate the latter in the political and legal framework of Kosovo. When looked at from the perspective of modern international standards and norms related to citizenship, certainly the Kosovar citizenship regime meets most of the democratic criteria used to define citizenship.

Notwithstanding these efforts by Kosovo institutions to provide for democratic inclusive citizenship, the issue is not being resolved without controversy. Kosovo's attempt to establish statehood and an autonomous citizenship are being seriously challenged both internally and externally. Internally, Kosovo faces stateness-related problems, as a considerable number of its residents, namely the majority of the Serb community, question both the state borders and its constitutional and legal order. Internationally, Kosovo's statehood and sovereignty is questioned by a number of states, including Serbia, Russia, Spain, and Cyprus. The challenges related to the partial international subjectivity of Kosovo is depriving the new country from membership in major international organisations, such as the United Nations, the Council of Europe, and the Organisation for Security and Cooperation in Europe. Consequently, Kosovo cannot become a party to many essential international documents, treaties and conventions related to human rights and citizenship. Hence, though Kosovo has unilaterally embraced most of the international human rights and citizenship-related conventions and documents and has tried to comply with those standards while erecting its core statehood legislation, implementation of the former risks to remain unsupervised properly by the competent specialised international organisations, bodies and agencies.

In sum, while it is unquestionable that Kosovo has set up the basis of a modern citizenship regime, the process of instituting and consolidating the Kosovar autonomous citizenship regime will largely depend on the overall political and legal developments surrounding Kosovo's international status. The most pressing issue for the moment remains political and legal integration of the Serb community in Kosovo as well as the establishment of good neighbourly relations with Serbia. In this context, the role of the European Union remains crucial in that it is obvious that both Serbia and Kosovo have adopted a clear EU integration agenda. First and foremost, it is essential that the EU has a clear position toward Kosovo as a state and its new citizenship regime in order for the new Kosovar institutions to gain more legitimacy, above all, in the eyes of Kosovo citizens, as well as internationally.

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